LIBRARY
SUPREME COURT, U. S

Supreme Court, U. S.
FILED
MAY 16 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1715

JOSEPH T. WALDROP, et al,
Petitioners,

versus

IDA BELLE HITE, et al,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

H. H. GEARINGER
Gearinger, Bowles and Petty
Suite 101 Professional Bldg.
Chattanooga, Tenn. 37402

Counsel for Petitioners

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statement of the Case	3
(1) Historical Background	3
(2) Chronology of Litigation	5
Reasons for Granting the Writ	7
Conclusion	9
Relief	9
Certificate of Service	10
Appendix	1a

TABLE OF AUTHORITIES

Cases:

Clayton v. Wade, 487 F.2d 595 8

Hall v. Garson, 430 F.2d 430 (1970) 8

Joiner v. City of Dallas, 329 F.Supp. 943 ..... 7, 9

Lynch v. Household Finance Corporation, 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972) 8

Mitchum v. Foster, 407 U.S. 225, 92 S.Ct. 2151, 2162 citing Ex Parte Virginia, 100 U.S. at 346 ..... 6, 8

Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473 9

Mulligan v. Schlachter, 389 F.2d 231 (6th Cir, 1968) .. 8

TABLE OF AUTHORITIES (Continued)

Page

Reynolds v. Sims, 84 S.Ct. 1361 9

United States v. McLeod, 385 F.2d 734 (5th Cir., 1967) 9

Waldrop et al v. Bettis, et al, 223 Ga. 715 and 225 Ga. 491 5

Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 ..... 6, 8

Statutes:

28 U.S.C.A. 1254(1) 2

42 U.S. Code 1983 ..... 6, 8

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973

No.

JOSEPH T. WALDROP, et al,
Petitioners,

versus

IDA BELLE HITE, et al,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

OPINIONS BELOW

Joseph T. Waldrop, et al v. Ida Belle Hite, et al, No. 73-3997, United States Court of Appeals for the Fifth Circuit, per curiam, affirmed, March 28, 1974, and rehearing denied, April 17, 1974; and in the District Court for the Northern District of Georgia, Atlanta Division, order granting motion for summary judgment to respondents, October 16, 1973, and order denying rehearing, November 5, 1973. [Copies appended unreported]

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C.A. 1254(1).

QUESTIONS PRESENTED

Did the Court of Appeals err in summarily affirming the District Court's grant of summary judgment to Respondents, on the ground that Petitioners (1) had not exhausted their remedies[1] and that (2) Petitioners could not seek relief in the District Court under the Civil Rights Acts[2] for an alleged erroneous decision of a state court depriving them of property rights guaranteed by the Constitution and laws of the United States and the Constitution and laws of the State of Georgia.

---

[1]In the first order dated October 16, 1973, the District Court asserted as the primary ground for the grant of summary judgment to Respondents that Petitioners should have exhausted their remedies by seeking a writ of certiorari in the Supreme Court of the United States to the Supreme Court of Georgia, and that the District Court conceived the case to be one in which Petitioners were seeking, in the Federal Court, to have the decision of the state courts reviewed.

[2]Upon being presented with the proposition that one need not exhaust state court remedies before proceeding in Federal Courts under the Civil Rights Acts, the District Court, in an order dated November 5, 1973, asserted that as the District Court saw it, Petitioners were merely attempting to have the Federal Court review an error of the state courts which the Distict Court admitted may be a "serious" error [p 3, Order of October 16, 1973] committed in the state court proceedings which allegedly deprived Petitioners of due process of law and their property rights.

STATEMENT OF THE CASE

The Facts

(1) *Historical Background*

Appreciation of the current question necessitates the reciting of events since about 1920.

Prior to June 3, 1920, the land in question, about 90 acres near Atlanta, Georgia, was owned by George Washington Waldrop.

On June 3, 1920, George Washington Waldrop made a deed to the land to Mollie Reynolds to secure a money loan.

On June 20, 1925, Mollie Reynolds recorded the deed and sued George Washington Waldrop to recover the money loaned.

On March 8, 1926, Mollie Reynolds obtained a verdict and judgment against George Washington Waldrop, who then filed a motion to set aside the verdict and judgment.

On March 31, 1928, George Washington Waldrop dismissed his motion to set aside the verdict and judgment.

On April 2, 1928, George Washington Waldrop and G. P. Reynolds agreed that the latter would buy in at the Sheriff's sale the land in question, which Sher-

iff's sale was to satisy the judgment obtained by Mollie Reynolds, and for his doing so, George Washington Waldrop prepaid to G. P. Reynolds, $200.00, the agreement being that when later G. P. Reynolds obtained the Sheriff's deed resulting from the sale, G. P. Reynolds would sell the land back to George Washington Waldrop for $500.00 When this agreement was made the title in the land was in George Washington Waldrop, but was subject to the judgment of Mollie Reynolds.

On May 1, 1928, the Sheriff, for George Washington Waldrop, sold the land and gave a deed to it to G. P. Reynolds to satisfy the judgment of Mollie Reynolds.

The deed from the Sheriff to G. P. Reynolds was duly recorded on May 1, 1928.

Thereafter, in a series of litigation, George Washington Waldrop sought to obtain from G. P. Reynolds the fulfillment of their prior agreement but was repeatedly unsuccessful in that George Washington Waldrop never did regain any right, interest or title in the land prior to his death, intestate, on September 5, 1953.

Subsequently, a dispute arose as to the ownership of the land among the heirs of George Washington Waldrop, and upon January 23, 1965 three of the ten children of George Washington Waldrop, following an irreconciable dispute between the ten children as to title to the land, secured from the heirs of G. P. Reynolds

for valuable consideration a quit claim deed.[2A] It is upon this deed Joseph T. Waldrop, George L. Waldrop and Morris B. Waldrop claim title to the land in the absence in law of any chain of title to all ten children of George Washington Waldrop.

(2) *Chronology of Litigation*

Being unable to agree as to the ownership of the land, a long series of litigation resulted in the state courts.[3] The result was that the state courts held, in summary, that the ten children of George Washington Waldrop constituted a class and that the quitclaim deed obtained on January 23, 1965 from the heirs of G. P. Reynolds by Joseph T. Waldrop, George C. Waldrop and Morris B. Waldrop, three sons of George Washington Waldrop, here the Petitioners, inured to the whole class of ten of the intestate heirs of George Washington Waldrop. This ignored the fact that when George Washington Waldrop died intestate on September 5, 1953, he had no right, title or interest in the

---

[2A] Copy appended

[3] *Waldrop et al v. Bettis, et al*, 223 Ga. 715 and 225 Ga. 491; following the decision in the Supreme Court of Georgia the Respondents sought to partition and sell the land. Petitioners protested and the case again went to the Supreme Court of Georgia which held, on May 31, 1973, that the lower court did not err in granting summary judgment to Respondents and summarily affirmed that the land was owned by the heirs of George Washington Waldrop as a class by reason that the quit-claim deed inured to the class despite the fact that there was no class created by inheritance when George Washington Waldrop died intestate on September 5, 1953 then having no right, title or interest in the land, as Petitioners contended. [copy appended]

land which could have passed to his heirs, hence no class was created to which the state courts erroneously held that the subsequently obtained quitclaim deed could inure.

Having failed in gaining relief in the state courts,[4] Petitioners then filed suit in the District Court for the Northern District of Georgia, Atlanta Division, from which this petition arises.

In the District Court the Petitioners charged that their civil rights regarding property rights in approximately 91 acres of very valuable land had been denied them, and unless granted relief their damage would be irreparable, great and immediate.[5]

This petition has as its pivotal question the denial to them of relief in the District Court and the action of the Court of Appeals in summarily affirming the District Court's grant of summary judgment to the Respondents for the *REASONS STATED* in the orders of the District Court.

---

[4]The purpose of 42 U.S. Code 1983 was to interpose the Federal Courts between the States and the people, as guardians of the people's federal rights, to protect the people from unconstitutional action under color of state law, whether that action be executive, legislative or JUDICIAL. *Mitchum v. Foster*, 407 U.S. 225, 92 S.Ct. 2151, 2162 citing *Ex parte Virginia*, 100 U.S. at 346.

[5]*Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669.

REASONS FOR GRANTING THE WRIT

This case presents two questions, the first of which is the primary question, being the threshhold question of the error of the District Court in granting summary judgment to the Respondents on grounds which have no merit and which are not only unknown to the law but fail to rise to justifiable reasons, and the second question involving the substantive issues as to ownership of the land.

This petition treats primarily with the threshhold question.

Neither of the District Court's stated reasons (1) that the Petitioners did not exhaust their remedies by seeking a writ of certiorari from this Court to the Supreme Court of Georgia or (2) that the District Court did not conceive the case as a civil rights case and only an attempt to have the federal courts review the decision of the Supreme Court of Georgia, are valid reasons for the grant of summary judgment. The Court of Appeals affirmed the error.

Petitioners have been denied property rights guaranteed by the Constitution and laws of the United States and the Constitution and laws of the State of Georgia which they have a right to protest by way of the Civil Rights Acts.

In *Joiner v. City of Dallas*, 329 F.Supp. 943, the District Court, relying on various Fifth Circuit decisions,

held that property rights are not protected under Civil Rights Acts, citing *Hall v. Garson*, 430 F.2d 430 (1970); in a per curiam opinion the Court of Appeals for the Fifth Circuit affirmed, 447 F.2d 1403 (September 27, 1971); on May 1, 1973 this Honorable Court granted a writ of certiorari, vacated the judgment, and remanded *Joiner* to the Court of Appeals for further consideration, citing *Mitchum v. Foster*, 407 U.S. 225, 92 S.Ct. 2151, 32 L.Ed.2d. 705 (1972), *Lynch v. Household Finance Corporation*, 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972), and *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971); whereupon, on January 17, 1974, the Court of Appeals, acting under the remand of this Court, reversed in part, vacated in part and remanded the case to the District Court for consideration of the substantive questions. In that decision the Court of Appeals held that Section 1983 protects property rights as well as personal liberties. 488 F.2d 519.

If the Respondents have utilized the state courts to deny to Petitioners their property rights, the Peitioners can seek redress in the federal courts even though the state court decision stands unreversed. *Mulligan v. Schlachter*, 389 F.2d 231 (6th Cir., 1968). See: *Clayton v. Wade*, 487 F.2d 595 where the District Court dismissed plaintiff's case on invalid grounds of insufficient basis.

The reasons given by the District Court in granting summary judgment to Respondents are not such reasons as in law would support such summary judgment,

separately or inextricably intertwined with a possible valid ground.[6]

The Federal courts, in such a situation as this, must ascertain whether the state courts have acted in accordance with their authority or whether they have misued their authority. *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473.

State courts are not insulated from Federal review where the state courts have been used by parties in circumventing a federally protected right. *Reynolds v. Sims*, 84 S.Ct. 1361, and *United States v. McLeod*, 385 F.2d 734 (5th Cir., 1967).

CONCLUSION

On the aforesaid threshold question the Petitioners most sincerely submit and urge that in affirming the invalid grounds upon which the district Court granted Respondents summary judgment and dismissed the case the Court of Appeals affirmed the error and therefore committed error depriving Petitioners of due process of law and a hearing on the substantive issues of ownership of the property.

RELIEF

It is respectfully submitted the petition for writ of certiorari should issue and that as in *Joiner*, supra, this Court should vacate the orders of the Court of

---

[6] *Joiner v. City of Dallas*, 488 F.2d 519, at 520.

Appeals of March 28, 1974 affirming the District Court and the order of April 17, 1974 upon rehearing, and remand the case to the Court of Appeals for further remand to the District Court to reinstate the case for trial upon the merits.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing brief has been served upon opposing counsel of record by placing the same properly addressed in the United States Mail with adequate postage affixed thereto this ____ day of May, 1974.

_____

APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 73-3997
Summary Calendar*

JOSEPH T. WALDROP, ET AL,
Plaintiffs-Appellants,
versus

IDA BELLE HITE, ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia

---

(March 28, 1974)

Before BROWN, Chief Judge, THORNBERRY and AINSWORTH, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

---

*Rule 18, 5 Cir., Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

[1]See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 73-3997

JOSEPH T. WALDROP, ET AL,
Plaintiff-Appellants,

versus

IDA BELLE HITE, ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia

---

ON PETITION FOR REHEARING
(April 17, 1974)

Before BROWN, Chief Judge, THORNBERRY and AINSWORTH, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Filed: Oct. 16, 1973

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOSEPH T. WALDROP, et al.,
Plaintiffs,

versus No. 18875

IDA BELLE HITE, et al.,
Defendants.

Plaintiffs in this action seek an injunction and damages claiming the unlawful deprivation of their federally guaranteed property rights by the defendants through the use of the State courts asserting such a deprivation to be a violation of 42 U.S.C. §§ 1983, 1985(3) and 1988. Defendants have answered, and have filed a motion for summary judgment which has been responded to by the plaintiffs.

In the joint statement of the nature of the litigation required by this Court, the plaintiffs, on October 9, 1973, have stated their contentions as follows:

> "George Washington Waldrop originally owned the property. Ownership passed from

him as a result of a Sheriff's sale. George Washington Waldrop was the father of the original parties. The property was brought in at the Sheriff's sale by G. P. Reynolds on May 1, 1928. Thereafter George Washington Waldrop tried without success in litigation to get a deed from G. P. Reynolds. George Washington Waldrop dies intestate on September 5, 1953 without regaining any interest, right or title in the land. Surviving George Washington Waldrop were ten (10) children, the original litigants in Waldrop, et al. v. Bettis, 223 Ga. 715 and 225 Ga. 491. Following the decision in 225 Ga. 491 further proceedings were had in Fulton Superior Court, the substance being a petition to partition. The instant plaintiffs sought unsuccessfully to have the Fulton Superior Court, by way of Georgia Code, Section 81A-160, declare the property to be exclusively theirs. Upon appeal to the Supreme Court of Georgia the Fulton Superior Court's judgment was affirmed. A timely petition to rehear was denied by the Supreme Court of Georgia. The instant suit was then filed in this Court.

"The simple and abbreviated claim of the present plaintiffs is that they are being deprived of their federally guaranteed property rights by the defendants using the State courts."

The above statement is substantiated by the affidavit of Kirby G. Bailey, Attorney, a party defendant,

accompanying defendants' motion for summary judgment.

Plaintiffs apparently concede that not all errors of State courts are reviewable in civil rights actions in federal courts, but assert (page 2 of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment) that "if in the exercise of their initial jurisdiction they [State courts] err *so seriously* as to thusly deny to the plaintiffs here due process of law, then those nonjudicial parties who have used the State courts are proper parties defendant [in a civil rights action in federal court]." Plaintiffs go on to assert in that same pleading "Persons involved in civil litigation in the State courts are entitled to procedural due process (Plaintiffs' Opposition, page 3)." With this principle the Court does no disagree but such rights can be vindicated even where denied by the highest state courts by writ of certiorari from the United States Supreme Court, an avenue which was not pursued by plaintiffs.

The Court views this action as simply an attempt to appeal conclusive judgments of the State courts of Georgia and perceives no civil rights liability as incident to such judgments, even though they should be conceded, for the purpose of this motion, to have been the results of *serious* errors. Consequently, the motion for summary judgment is GRANTED.

Defendants urge that the court take jurisdiction to consider defendants' counterclaim for punitive damages, a claim which apparently is now pending in Ful-

ton Superior Court. No independent federal jurisdiction is asserted with respect to such claim, and the Court declines to exercise any pendent jurisdiction which it otherwise may have.

It is therefore ORDERED that the defendants have judgment on the main action and that the counterclaim stand dismissed.

This 16th day of October, 1973.

/s/ CHARLES A. MOYE, JR.
UNITED STATES
DISTRICT JUDGE

ORDER

Filed: Nov. 6, 1973

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOSEPH T. WALDROP, et al.,

versus No. 18875

IDA BELLE HITE, et al.

Plaintiffs' motion for a new trial, or, in the alternative, to amend the order granting defendants' mo-

tion for summary judgment, filed October 16, 1973, is hereby DENIED.

The Court recognizes that there are no "exhaustion" requirements with respect to civil rights actions; the Court simply is of the belief that what basically is an appeal from an allegedly erroneous state judgment cannot be transferred to the federal court by the simple expedient of denominating the action here as a civil rights action. It appears to the Court that such is what plaintiff is attempting here.

SO ORDERED, this 5th day of November, 1973.

/s/ CHARLES A. MOYE, JR.
UNITED STATES
DISTRICT JUDGE

QUIT-CLAIM DEED

STATE OF TENNESSEE, KNOX COUNTY.

THIS INDENTURE, made this 23 day of January in the year of our Lord One Thousand Nine Hundred and Sixty-five between Laura A. Reynolds and Parmer A. Reynolds of the first part, and Norris B. Waldrop, Joe Thomas Waldrop, and George Clifford Waldrop of the second part.

WITNESSETH: That the said parties of the first part for and in consideration of the sum of Five Thousand and no/100 Dollars, cash in hand paid, the receipt of which is hereby acknowledged, have bargained, sold and do by these presents bargain, sell, remise, release,

and forever quit-claim to the said parties of the second part, their heirs and assigns, all the right, title, interest, claim or demand which the said parties of the first part have or may have had in and to all that tract and parcel of land lying and being in Land Lots 238, 239 and 240 of the First District and Second Section, Fulton County, Georgia and more particularly described as follows:

BEGINNING at an iron pin on the Northeast side of Pine Grove Road at the intersection of the Northeast side of Pine Grove Road with the East line of Land Lot 239 and going thence North along the East line of Land Lot 239 seven hundred thirty-eight and three tenths (738.3) feet to an iron pin at the Northeast corner of Land Lot 239; thence North along the East line of Land Lot 240 one thousand two hundred forty-three and four tenths (1,243.4) feet to an iron pin at the Northeast corner of Land Lot 240; thence West along the North line of Land Lot 240 one thousand three hundred twenty-six and three tenths (1,326.3) feet to an iron pin at the Northwest corner of Land Lot 240; thence South along the West line of Land Lot 240 and the West line of Land Lot 239 one thousand two hundred forty and four tenths (1,240.4) feet to an iron pin on the Northeast side of Pine Grove Road; thence South along the West line of Land Lot 239 fifty-two and nine tenths (52.9) feet to an iron pin on the Southwest side of Pine Grove Road; thence South along the West line of Land Lot 239 one thousand two hundred seventy-five and three tenths (1,275.3) feet to an iron pin at the Southwest corner of Land Lot 239; thence South along

the West line of Land Lot 238 one thousand three hundred fifteen and five tenths (1,315.5) feet to an iron pin at the Southwest corner of Land Lot 238; thence East along the South line of Land Lot 238 seven hundred fifty-five and two tenths (755.2) feet to an iron pin; thence North at an interior angle of 87 degrees 02 minutes to the aforementioned line one thousand three hundred seventy-four and six tenths (1,374.6) feet to an iron pin; thence East at an interior angle of 91 degrees 35 minutes to the aforementioned line three hundred twenty-six (326) feet to an iron pin; thence North at an interior angle of 92 degrees 04 minutes to the aforementioned line one hundred fifteen (115) feet to an iron pin; thence Northeasterly at an interior angle of 115 degrees 30 minutes to the aforementioned line three hundred one and four tenths (301.4) feet to an iron pin; thence East at an interior angle of 154 degrees 50 minutes to the aforementioned line eighty-two and five tenths (82.5) feet to an iron pin on the East line of Land Lot 239; thence North along the East line of Land Lot 239 two hundred twenty-three (223) feet to an iron pin on the Southwest side of Pine Grove Road; thence North along the East line of Land Lot 239 fifty-four and five tenths (54.5) feet to an iron pin and the point of beginning.

For descriptive purposes, reference is made to plat of the Estate of G. W. Waldrop located in Land Lots 238, 239, and 240 of the First District, Second Section, Fulton County, Georgia by C. E. Abercrombie dated January 8, 1963. This deed is given for the purpose of relinquishing any and all rights the Grantors herein

have in the above described property by virtue of being the sole heirs of G. P. Reynolds. with all the rights, members and appurtenances to the said described premises in anywise appertaining or belonging.

TO HAVE AND TO HOLD the said described premises unto the said parties of the second part, their heirs and assigns, so that neither the said parties of the first part nor their heirs, nor any other person or persons claiming under them shall at any time, claim or demand any right, title or interest to the aforesaid described premises or its appurtenances.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and affixed their seals the day and year above written.

Signed, sealed and delivered in presence of:

/s/ DAVID E. RODGERS
/s/ ILLEGIBLE

/s/ PARMER A. REYNOLDS
/s/ LAURA A. REYNOLDS

Supreme Court of Georgia Decided: May 31, 1973

27936. HITE et al. v. WALDROP et al.

The trial judge did not err in granting partial summary judgment to the plaintiffs.

MOBLEY, Chief Justice. This appeal is from the grant of a partial summary judgment.

Ida Belle Hite, Ruby B. Thigpen, Bonnie Ethen Neal, and Kirby G. Bailey filed an action for equitable partition against Joe T. Waldrop, Ozelle B. Waldrop, George C. Waldrop, Agnes Odean Waldrop, Norris B. Waldrop, and Edith Irene Waldrop.

The defendants filed a "counterclaim in equity" in which they asserted that two former decisions of this court in cases concerning the title to this same property, between these same parties, or their privies, were in error, and that this error should be corrected under Code Ann. § 81A-160 (b) (Ga. L. 1966, pp. 609, 662; Ga. L. 1967, pp. 226, 239, 240). This paragraph of Code Ann. § 81A-160 states the methods by which a judgment may be attacked. It was prayed in the counterclaim that partition be denied, and that the defendants be adjudged to be the owners of the land to the exclusion of the plaintiffs.

The plaintiffs amended their complaint and asked for attorney's fees and punitive damages.

The plaintiffs filed a motion for partial summary judgment as to their basic right for partition. The trial

judge entered an order granting this motion, holding that the defendants' counterclaim was barred by res judicata.

In Waldrop v. Bettis, 223 Ga. 715 (3) (157 SE2d 870), it was held by this court that under the allegations of the petition in that case the parties were cotenants in described land (the same land described in the present case), under a quit-claim deed procured by Joseph T. Waldrop, Dirk N. Waldrop, and George C. Waldrop. In Waldrop v. Bettis, 225 Ga. 491 (169 SE2d 777), this court affirmed the verdict of the jury decreeing title to the property in all the parties as cotenants, and directing the plaintiffs to pay to the defendants their pro rata share of the costs of obtaining the quitclaim deed. The appellants concede that the appellees have paid their pro rata share of the costs of obtaining the quitclaim deed.

In response to the motion for summary judgment the appellants show no reason why the former judgment (affirmed by this court) should be set aside in equity, but merely argue that the decision of this court affirming the jury verdict adverse to them was erroneous.

Code Ann. 81A-160 (e) contains the same grounds for setting aside a judgment in equity as former Code § 37-214. Code § 110-501, pertaining to the conclusiveness of judgments, has not been repealed.

There must be an end to litigation. It is futile for the courts to decide issues if those same issues may be relitigated by the losing parties, contending that error was committed in the previous decisions. See Bowman v. Bowman, 215 Ga. 560 (111 SE2d 226).

The trial judge properly held that the counterclaim was barred by res judicata.

Judgment affirmed. All the Justices concur.

Clerk's Office, Supreme Court of Georgia

ATLANTA Jun 21, 1973

DEAR SIR:

The motion for a rehearing was denied today:
Case No. 27936

Ida Belle Hite et al
v.
Joe L. Waldrop et al

Yours very truly,
MRS. JOLINE B. WILLIAMS,
Clerk